

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0051P**

**Use Tax**

**Calendar Years 1998 and 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer has two manufacturing plants in Indiana and a machine shop. Taxpayer was previously audited on August 15 1993. Upon audit it was determined that the taxpayer failed to remit use tax on over fifty percent of its taxable purchases, most of which are clearly taxable. The items consist of rental table and chairs, rental accommodations under thirty days, raw material tags and scrap tags, subscriptions, cranes and fork trucks used to remove raw materials from storage prior to the introduction into the production process, maintenance supplies, and other miscellaneous items. Taxpayer was given credit in the audit for items it erroneously paid tax.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it has always attempted to fully comply with the laws of Indiana by filing quarterly returns, paying tax to various in-state vendors and accruing and remitting use tax to Indiana on a monthly basis.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The taxpayer failed to self-assess and remit use tax on more than fifty percent (50%) of its clearly taxable purchases and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer’s protest is denied.